

\*E-Filed 4/26/13\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

BONIFACIO ALEJANDRES-SANTOS,

No. C 13-0406 RS (PR)

Petitioner,

**ORDER REOPENING ACTION;**

v.

**ORDER TO SHOW CAUSE WHY  
THE PETITION SHOULD NOT BE  
DISMISSED**

RANDY GROUNDS,

Respondent.

This federal habeas corpus action was dismissed because petitioner failed to file a complete application to proceed *in forma pauperis* (“IFP”), or (2) pay the filing fee of \$5.00. Petitioner has since filed a complete IFP application and a motion to reopen. The motion to reopen (Docket No. 5) is GRANTED, the action is hereby REOPENED, and the Clerk is directed to amend the docket accordingly. Petitioner’s IFP motion (Docket No. 6) is GRANTED. The judgment (Docket No. 3) and the order of dismissal (Docket No. 4) are VACATED.

No. C 13-0406 RS (PR)  
ORDER REOPENING ACTION

Petitioner is ordered to show cause on or before June 1, 2013 why the petition should not be dismissed for failure to (1) exhaust his claims in state court, and (2) sign his petition. Prisoners in state custody who wish to challenge collaterally in federal habeas proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. *See* 28 U.S.C. § 2254(b), (c); *Rose v. Lundy*, 455 U.S. 509, 515–16 (1982). The state’s highest court must be given an opportunity to rule on the claims even if review is discretionary. *See O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (petitioner must invoke “one complete round of the State’s established appellate review process”). Even though non-exhaustion is an affirmative defense, the petitioner bears the burden of proof that state judicial remedies were properly exhausted. *Parker v. Kelchner*, 429 F.3d 58, 62 (3d Cir. 2005). If available state remedies have not been exhausted as to all claims, the district court must dismiss the petition. *See Rose*, 455 U.S. at 510. **In his response to this order, petitioner must state under penalty of perjury which claims he has exhausted, if any.**

Petitioner, or his representative, also must address his failure to sign his petition. Petitioner’s sister, not petitioner, signed his petition. In the response to this order, petitioner or his sister must establish standing to sign on petitioner’s behalf. A person other than the detained person may file an application for a writ of habeas corpus and establish standing as a “next friend.” *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990). A next friend does not himself become a party to the habeas petition, “but simply pursues the cause on behalf of the detained person, who remains the real party in interest.” *Id.* There are two firmly rooted prerequisites to “next friend” standing. First, a next friend “must provide an adequate explanation — such as inaccessibility, mental incompetency, or other disability — why the real party in interest cannot appear on his own behalf to prosecute the action.” Second, the next friend “must be truly dedicated to the best interests of the person on whose behalf he


1 seeks to litigate and it has been further suggested that a next friend must have some  
2 significant relationship with the real party in interest.” The purported next friend bears the  
3 burden “to establish the propriety of his status and thereby justify the jurisdiction of the  
4 court.” *Id.* at 163–64 (citations omitted).

5 **If petitioner fails to file an appropriate response by the above date, the petition**  
6 **will be dismissed under Federal Rule of Civil Procedure 41(b) for failure to prosecute.**

7 The Clerk shall terminate Docket Nos. 5 and 6.

8 **IT IS SO ORDERED.**

9 DATED: April 26, 2013

  
RICHARD SEEBORG  
United States District Judge

United States District Court  
For the Northern District of California